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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,379	02/08/2005	Guy Denom	04246	6813
23338 7590 12/26/2006 DENNISON, SCHULTZ & MACDONALD 1727 KING STREET SUITE 105 ALEXANDRIA, VA 22314			EXAMINER DURAND, PAUL R	
			ART UNIT 3721	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		12/26/2006	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/518,379

Applicant(s)

DENOM ET AL.

Examiner

Paul Durand

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-14 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) 16-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Newly submitted claim 20 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claims 16-20 is directed toward a packaging method, while claims 1,2 and 4-14 are directed toward a packaging apparatus and are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus as claimed can be used to practice another and materially different process, such as a process that does not require the bottle to be raised to the capping position or does not require an incremental time function to determine the capping sequence.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 16-20 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Drawings***

2. The replacement drawings were received on 10/3/06. These drawings are accepted.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1,2 and 4-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 claims, "screwing means", while dependant claim 2 claims a rotation of the screwing means being similar to the capping head. However, the examiner cannot determine from the disclosure, exactly what the screwing means encompasses.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1,2 and 4-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear to the examiner, what the limitation "screwing means" encompasses

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1,2,4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hannon (US 3,645,062) in view of Barca (US 5,687,552).

In claims 1 and 2 and as best as the examiner can understand the claims, Hannon discloses the invention as claimed including a capping machine for a receptacle in the form of bottle 11, having an axis of symmetry through the longitudinal center of the bottle, having an upper threaded portion, which turns around the neck of the bottle, having a screw sealing section a head, generally at 18, a deformable skirt section 19, the device having a capping head generally indicated by rotating spindle 48, rotating at a predetermined speed around the axis of symmetry, and axial displaceable to move the device closer to the neck of the bottle, the capping head provided with screwing means comprised of spindle 48 and plunger 27, biased by spring 26 to screw the cap to the upper portion of the bottle, crimping means 68, which bends the skirt portion to contact the outer ring shaped portion of the bottle, the axial displacement comprising a first axial displacement of the capping head, activating the screwing means and a second axial displacement activating the crimping means, where the screwing means rotates the cap, with respect to the neck of the bottle, the screwing means applying a force to the head of the cap during all or part of the crewing step (see entire document).

What Hannon does not disclose is the specific force of 20 to 150N applied to the cap and the disclosure of screwing means which rotates the cap at the same speed as the capping head.

However, Barca teaches that it is old and well known in the art of capping to provide a capping head 34, with integrated screwing means, which holds a cap and rotates it at the same speed as the capping head for the purpose of efficiently placing a cap onto a bottle (see Fig.4, C4,L6-29 and C9,L1-17). Moreover, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided a predetermined torque range, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

In claim 4, Hannon discloses the invention as claimed including arms 70, carrying crimping rollers 69 at the lower end, which is moved away from the cap during the screwing step and toward the cap during the crimping step. What Hannon does not disclose is the use of multiple arms to crimp the cap. However, it would have been obvious to one having ordinary skill in the art the time the invention was made to have provided at least two crimping arms and rollers, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

In claim 5, Hannon discloses the invention as claimed including spring, generally indicated by 43, which provides a further biasing force to the cap to facilitate the crimping step. What Hannon does not disclose is the specific spring force of 500 to 1500N applied to the cap. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided a predetermined torque range, since it has been held that where the general conditions of a claim are

disclosed in the prior art, discovering the optimum or workable range involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

***Allowable Subject Matter***

9. Claims 6-14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

10. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.
11. This action is non-final.

***Conclusion***

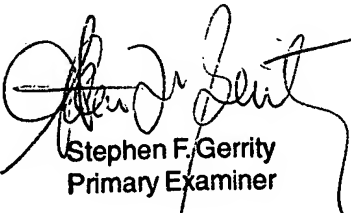
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Paul Durand  
December 18, 2006



Stephen F. Gerrity  
Primary Examiner